

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:03CV568-MU-02

DULAIN LOTHARP,)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
NORA HUNT, Warden,)	
Respondent.)	
_____)	

THIS MATTER comes before the Court on Petitioner's Motion for Reconsideration pursuant to Rule 60(b) (Doc. No. 11), filed March 19, 2009.

The record of this matter reflects that on November 26, 2003, Petitioner filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. No. 1). On October 29, 2004, the Court entered an Order granting Respondent's Motion for Summary Judgment (Doc. No. 6). Petitioner's appeal of that decision was dismissed by the Fourth Circuit Court of Appeals. See Lotharp v. Hunt, No. 04-7941 (4th Cir. June 22, 2005).

Nevertheless, Petitioner has returned to this Court arguing that the Court erred in finding his claim exhausted by procedural default and, therefore, not a ground upon which he could secure relief. Petitioner contends that this Court ruled on his claim

without first giving the State Court an opportunity to do so. Notwithstanding his beliefs to the contrary, however, this Court's decision has been tacitly approved by the Fourth Circuit Court of Appeals. Furthermore, to the extent that Petitioner is attempting to raise new matters in support of his request for relief, he simply is not entitled to do so. Accordingly, Petitioner's Motion for Reconsideration must be **DENIED**.

SO ORDERED.

Signed: April 8, 2010

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

